Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	

REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC.

Jonathan E. Canis
Ross Buntrock
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, NW
Fifth Floor
Washington, DC 20036
Tele: (202) 955-9664
Fax: (202) 955-9792

Counsel for
INTERMEDIA COMMUNICATIONS INC.

October 16, 1998

SUMMARY

With the exception of the Commission's proposed separate affiliate rules, the majority of Comments in this proceeding evince categorical support for adoption of many of the rules and policies that the Commission tentatively set forth it its Notice of Proposed Rule Making ("*NPRM*"), as well as the supplemental rules, policies, and clarifications proposed by Intermedia and several other competitive carriers.

Competitive providers agree with the Commission that national collocation standards must be established. Commentors echo the need for collocation alternatives and other rules to facilitate competitive entry and jump-start competition in local markets, including: (1) making available Extended Links as UNEs; (2) cageless collocation; (3) shared collocation; and (4) the elimination of restrictions on cross-connections. Intermedia agrees with comments filed by state regulators that any national collocation rules should serve as benchmarks that state commissions are free to augment, pursuant to the specific terms of the Act. While some ILECs indicate that they are implementing alternative forms of physical collocation in the absence of national standards, CLECs unanimously agree that these arrangements must be standardized to take the guess-work out of the collocation process. Moreover, the record is rife with requests that the Commission overhaul its outdated virtual collocation rules, and to similarly update its rules restricting the types of equipment that may be located in the central office to reflect changes in the law, as well as technology.

Intermedia, along with the vast majority of commentors, including every state commission that filed comments in this proceeding, agree that the nonstructural safeguards the Commission proposes in the NPRM will not be adequate to ensure that ILECs do not discriminate in favor of their advanced services affiliates. Intermedia submits that the rules

should be strengthened by : (1) requiring that ILEC affiliates be limited to utilizing physical collocation, not virtual; (2) requiring that all ILEC/affiliate transactions be pursuant to tariff or state commission approved agreements; (3) requiring ILEC affiliates to have substantial outside ownership; and (4) requiring all ILEC separate affiliate plans to be approved by the Commission. Intermedia, along with other competitors, submit that the Commission should reject the watered-down measures put forth by the ILECs.

The preponderance of the comments filed agree with Intermedia that the Commission should establish uniform national loop offerings consisting of four standard loop types: two and four-wire analog, and two and four-wire digital loops. While this menu may obviously be supplemented by state commissions, CLECs agree that a predictable menu of loop offerings will speed deployment of advanced services.

Besides standardizing loop and collocation alternatives, the Commission should also exercise its authority to define additional UNEs, including dark fiber. Further, the record clearly establishes that the Commission should adopt a broad definition of the unbundled local loop, and should implement provisions that facilitate the provisioning of unbundled loops, and clarify that subloop unbundling and interconnection are technically feasible

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(Continued)

Page

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Deployment of Wireline Services Offering	)	
Advanced Telecommunications Capability	)	CC Docket No. 98-147

REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC.

INTRODUCTION

In the cacophony of proposed rules, restrictions, and recommendations that constitutes the record in this proceeding, Intermedia submits that the Commission must not lose sight of the mandate of Section 706: the timely deployment of advanced telecommunications services to all Americans. Intermedia, therefore urges the Commission to ILECs to adopt the procompetitive proposals included in the *NPRM*, in addition to the proposals set forth by Intermedia, and other CLECs in this docket.

The Commission must establish national collocation standards that incorporate the innovative proposals contained in the *NPRM*, as well the proposals in the comments of Intermedia and other competitive carriers. The Commission's national standards must include standards for physical and virtual collocation, and they must provide for alternatives to physical collocation, including the Extended Link UNE. the Commission should heed the warnings of the state commissions filing comments in this docket, and take substantial steps to beef up its proposed nonstructural safeguards to ensure that ILECs cannot perpetuate they types of

discrimination that state regulators have documented in their comments. Moreover, the Commission should exercise its authority to establish uniform national loop requirements, and ensure that CLECs have meaningful information about the availability of advanced service-capable loops. Intermedia fully explains these proposals, in addition to parsing the comments of other parties, below.

I. COMMISSION SHOULD ESTABLISH NATIONAL COLLOCATION STANDARDS

The record in this proceeding clearly supports the view that the Commission should exercise its authority under sections 201 and 251(c)(3) of the Act to set national minimum collocation standards.[1] The LECs, predictably, view any national collocation policy as beyond the Commission's "takings" authority in violation of Fifth Amendment.[2] However, these ILEC assertions contradict the plain language of the Act and the express findings of the Eighth Circuit Court of Appeals. Given the record evidence presented in this proceeding, Intermedia submits that the Commission should indeed adopt minimum national collocation standards that (1) overhaul rules governing virtual collocation; (2) provide for alternatives to traditional physical collocation; and (3) remove restrictions on the types of equipment that may be collocated.

---

1 Allegiance Telecom Comments at 2-3; AT&T at 72; Cable and Wireless Comments at 9-11; CompTel Comments at 38-40; CTSI Comments at 7; e.spire Comments at 21; GST Comments at 23-25; KMC Comments at 13; MGC Comments at 12; NEXTLINK Comments at 12; RCN at 12; Transwire Comments at 22; US Xchange Comments at 7; WESTEL Comments at 12;

2 Ameritech Comments at 32 (the language and structure of the Act clearly demonstrate that collocation measures should be determined through negotiation and arbitration, not federal regulation … the Commission does not appear to have authority to issue collocation rules); Bell Atlantic Comments at 31 (the Commission should not revise its (continued…)

A. The Commission has the authority to set national collocation standards

The Commission's authority to establish collocation standards is well established, as evidenced by the Commission's existing national standards.[3] In promulgating its collocation standards in the *Expanded Interconnection* proceeding, the Commission stated that the Act "authorizes the Commission where necessary or desirable in the public interest, to order common carriers to establish physical connections with other carriers, whether or not the common carriers might choose to do so voluntarily."[4] Additionally, sections 4(i) and 214(d), the Commission noted, provide supplemental authority to order expanded interconnection services – *i.e.*, physical and virtual collocation.[5]

The 1996 amendments to the Act expanded the Commission's authority to define the terms and conditions of collocation by expressly directing the Commission to promulgate rules implementing the ILECs' section 251(c) interconnection obligations, which include an express obligation to offer collocation.[6] Under this authority, the Commission promulgated national collocation rules (based on its existing *Expanded Interconnection* rules), which were unequivocally upheld by the Court of Appeals for the Eighth Circuit. As the Eighth Circuit noted, "the Commission's rules and policies regarding the incumbent LECs' duty to provide for

---

(…continued)
collocation rules); GTE Comments at 60-63 (noting that expanded collocation rules would raise serious constitutional issues under the Takings Clause).

3 47 CFR §§ 51.323, 64.1401, 61.1402.

4 *Expanded Interconnection with Local Telephone Company Facilities*, Memorandum Opinion and Order, 9 FCC Rcd 5154, ¶ 18 (rel. July 25, 1994) ("*Virtual Collocation Order*").

5 *Id.* at ¶ 20.

6 47 USC 251(d)(1).

physical collocation of equipment [are] consistent with the Act's terms contained in subsection 251(c)(6)."[7] Thus, interconnection jurisprudence and recent appellate court case law support the view that the Commission possesses the authority requisite to establish – and indeed to expand – national collocation standards.

Intermedia notes that state commissions – in addition to CLECs – endorse the Commission's tentative conclusion that collocation standards "should serve as minimum requirements and that states should continue to have flexibility to adopt additional requirements."[8] The Illinois, Minnesota, and Texas Commissions support additional federal collocation requirements, so long as they permit flexibility for states to determine and impose additional standards for technical, demographic, or geographic reasons.[9] The Illinois Commission also proposes an innovative waiver provision that would permit state commissions to deviate from minimum national standards if needed.[10] In short, record evidence submitted by the state commissions demonstrates a clear receptiveness to the national minimum collocation standards proposed by the Commission in this proceeding.

B. The Commission should overhaul virtual collocation

Existing virtual collocation requirements that force CLECs to transfer title of equipment to ILECs are out of date and should by updated to reflect the Commission's expanded

---

7 *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 818 (8th Cir. 1997) *cert granted sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S. Ct. 879 (U.S. 1998).

8 *NPRM* at ¶ 124.

9 Illinois Commerce Commission Comments at 8, Minnesota Department of Public Service Comments at 17, Texas Public Utility Commission Comments at 7.

10 Illinois Commerce Commission Comments at 8.

authority to set standards for both physical and virtual collocation. Prior to the 1996 Act, the Commission lacked the Takings authority necessary to require LECs to offer physical collocation to competitive carriers.[11] To navigate this pre-1996 Act lack of Takings authority, the Commission introduced its mandatory virtual collocation policy under which ILECs purchase or lease a collocator's equipment, typically for $1, and the ILEC controls all installation, repair, and maintenance functions on the collocator's equipment.[12]

With the passage of the 1996 Act, the Commission received substantive authority to develop rules regarding physical and virtual collocation, and Intermedia supports the view that the Commission should update its rules to make virtual collocation a more effective means of interconnecting with ILEC networks.[13] Specifically, Intermedia urges the Commission to allow CLECs to: (1) own the equipment that they virtually collocate with ILECs and (2) to hire independent third-party vendors to service their virtually collocated equipment.

By permitting CLECs to own equipment virtually collocated and to hire third-party vendors to service virtually collocated equipment, CLECs would gain some control over their facilities and would eliminate the problem of having ILEC employees remain the monopoly source for maintaining and repairing virtually collocated equipment. Additionally, Intermedia notes that the Commission should clarify that ILECs may not require a "security escort" when a CLEC uses an approved third-party vendor to service virtually collocated equipment. While virtual collocation will never be a good substitute for physical collocation, new Commission

---

11 *Bell Atlantic v. FCC*, 24 F.3d 1441 (DC Cir. 1994).

12 *Expanded Interconnection with Local Telephone Company Facilities*, Memorandum Opinion and Order, 9 FCC Rcd 5154, ¶ 25 (rel. July 25, 1994).

13 Allegiance Comments at 6; Covad Comments at 35-36.

rules endorsing CLEC ownership and third-party installation, maintenance, and repair of virtually collocated equipment will go a long way toward improving the competitive viability of virtual collocation.

C. The Commission should adopt alternatives to traditional physical collocation

Competitive providers unequivocally support the Commission's proposed collocation alternatives, and Intermedia additionally supports the innovative measures proposed by competitive carriers. The ILECs, predictably, argue against many new collocation alternatives citing "security concerns" and a preference for "negotiating" collocation alternatives. Intermedia submits that ILECs' security concerns are much overstated and that case-by-case negotiations will serve only to slow-roll the availability of procompetitive collocation alternatives. Intermedia believes that Commission adoption of the collocation alternatives described below will greatly improve the ability of competitive carriers to deploy advanced services by conserving scarce collocation space and by providing competitors with much needed flexibility.

- *Extended Links*: Intermedia fully supports e.spire's recommendation that the Commission should require ILECs to provide the Extended Link[14] at cost-based rates as a collocation alternative.[15] Intermedia submits that national adoption of the Extended Link would be the single most effective way for the Commission to maximize the utilization of scarce

---

14 The Extended Link combines the local loop, interoffice transmission, and in some cases multiplexing together into a single transmission facility, which allows a single collocation arrangement to reach customers served by multiple ILEC end offices.

15 e.spire Comments at 22.

collocation space and minimize the effect of collocation as a barrier to entry. As Intermedia noted in its initial comments, the current ILEC practice of requiring CLECs to collocate in every end office is the number one reason for existing space-exhaust problems. Additionally requiring CLECs to collocate in every ILEC end office limits the ability of CLECs to utilize modern network architecture by binding CLECs to the ILECs' distributed network architecture through inefficient collocation practices.

- *Cageless collocation*: Comments by competitive carriers overwhelmingly support cageless collocation,[16] and at least three ILECs are not averse to cageless collocation, so long as ILEC and CLEC equipment is not commingled around the ILEC main distribution frame.[17] Intermedia, however, supports the view of Covad, Sprint, and WESTEL, each of whom sees no reason why the Commission should not mandate commingled cageless collocation. Intermedia agrees with Covad that ILEC "network security" concerns are much overstated and that simple video camera and secure ID cards will suitably address the ILECs' concerns. Indeed, Intermedia permits commingled collocation in its facilities and has never once fallen victim to the "network harm" and "human error" specters that prominently haunt the ILEC pleadings.[18]

---

16 Allegiance Comments at 4-5, AT&T Comments at 7-9, Cable & Wireless Comments at 11-13, CIX Comments at 24, Covad Comments at 17-19, CTSI Comments at 9, e.spire Comments at 24, GST Comments at 31-32, ICG Comments at 21-25, KMC Comments at 16, MCI-WorldCom Comments at 40, Rhythms NetConnections Comments at 28-30, TRA Comments at 40, Transwire Comments at 22-32.

17 Ameritech Comments at 42; Bell Atlantic Comments at 32; GTE Comments at 66-73; U S WEST Comments at 40.

18 *E.g.*, SBC Comments at 20-27.

- *Shared collocation cages.* Intermedia similarly notes that substantial portions of the record in this proceeding support shared collocation arrangements.[19] Indeed, GTE voiced support for shared cages,[20] and Bell Atlantic – at least in New York – has agreed to permit CLECs to share cages. Ameritech also at least evidenced a willingness to "negotiate" the possibility of shared arrangements; however, Ameritech expressed concern that collocators might attempt to warehouse space for resale purposes.[21] In response, Intermedia submits that the Commission's rules concerning space warehousing would protect against this type of activity. Therefore, the Commission should feel comfortable incorporating shared cages into national collocation standards.

- *Cross-connecting among collocated CLEC equipment.* As the Commission has stated, "it serves the public interest and is consistent with the policy goals of section 251 to require that incumbents permit two or more collocators to interconnect their networks at the incumbent's premises."[22] Section 251(c)(6) in no way limits the Commission's authority to require ILECs to permit such cross connections, and moreover, requiring ILECs to permit cross-connection among collocation arrangements will "foster competition by promoting efficient operation."[23] Intermedia submits that the Commission should adopt the Texas approach

---

19 AT&T Comments at 83, ICG Comments at 26, MGC Comments at 24-29, Qwest Comments at 58, Rhythyms NetConnections Comments at 28-30.

20 GTE at 66.

21 Ameritech at 43.

22 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 594 (1996) (subsequent history omitted).

23 *Local Competition First Report and Order* at ¶ 594.

to cross-connections, and affirmatively find that ILECs may not impose any restrictions on collocated carriers seeking to establish cross-connects between and among collocation arrangements.[24] Given the procompetitive benefits of permitting CLEC cross-connection and the lack of any substantive opposition, the Commission should include provisions supporting CLEC cross-connection in any national collocation standards.

D. The record supports removal of restrictions on the types of equipment that may be collocated

Intermedia supports the view of commenters suggesting that the Commission should modify its collocation rules so that CLECs can collocate equipment used to provide advanced services.[25] As the Commission noted, "incumbent LECs should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that competing carriers may collocate."[26] Thus, Intermedia submits that the Commission should eliminate existing restrictions on switching equipment and include in any national collocation rules express language that permits CLECs to collocate remote switching modules, digital subscriber line access multiplexers, routers, and Internet Protocol conversion equipment.

Regarding equipment standards, Intermedia supports the view of AT&T and others suggesting that the Commission should permit CLECs to collocate any equipment that

---

24 Texas Public Utilities Commission Comments at 8.

25 Allegiance Comments at 3-4, AT&T Comments at 77, CompTel Comments at 38-40, Covad Comments at 17-19, e.spire Comments at 27-28, IAC Comments at 17-19, ICG Comments at 16-20, NorthPoint Comments at 3-7, Qwest Comments at 53, Sprint Comments at 7-12.

26 *NPRM* at ¶ 129.

conforms to NEBS safety standards, irrespective of whether it also meets NEBS performance reliability standards.[27] Additionally, the Commission should require ILECs to permit CLECs to collocate equipment that is not compliant with applicable NEBS safety standards in cases where the ILEC or ILEC affiliate uses non-compliant equipment.

II. NONSTRUCTURAL SAFEGUARDS WILL NOT ADEQUATELY ENSURE AGAINST ILEC DISCRIMINATION IN THE PROVISION OF ADVANCED SERVICES

Intermedia takes strong exception to the ILEC position that nonstructural safeguards adequately would protect against ILEC discrimination in favor of their advanced services unit.[28] Indeed, Intermedia suggests that the Commission's proposed structural separation rules do not go far enough, and Intermedia notes that every state commission that addressed this issue argued that the Commission should strengthen its proposed structural separation rules.

A. The Commission should further strengthen its structural separation proposal

Intermedia submits that the Commission should adopt proposals of ALTS and others for strengthening the proposed structural separation rules. To this end, the Commission should order that:

---

27 AT&T Comments at 78, Covad Comments at 24, e.spire Comments at 28.

28 Bell Atlantic Comments at 23, BellSouth Comments at 21, SBC Comments at 4, U S WEST Comments at 15.

- An ILEC data affiliate may only purchase physical and not virtual collocation, as permitting virtual collocation would place affiliate equipment under the control of the ILEC parent company.[29]

- All ILEC-affiliate and affiliate-ILEC transactions and contract must be made pursuant to a tariff or contained in a state commission-approved interconnection agreement, subject to the opt-in provisions of section 252(i) of the Act,[30] and moreover, contracts should be subject to "pick and choose rules" to prevent ILECs to designing contracts with terms unilateral unfavorable to CLECs.[31]

- Any ILEC data affiliate must have substantial outside ownership, such that SEC reporting requirements are triggered.[32]

Additionally, Intermedia supports Allegiance's proposal that any ILEC separate affiliate plan should receive Commission approval before the ILEC establishes the affiliate.[33] As Allegiance suggests, the proposed plan should detail proposed asset transfers, marketing plans, and a capitalization plan, and the Commission should place these separate affiliate plans on the public record for comment. Intermedia submits that a publicly filed ILEC affiliate plan with an opportunity for public comment would go a long way toward ensuring that competitors receive adequate notice of an ILEC's decision to establish a separate subsidiary and that the ILEC plan comports with the Commission's separate subsidiary requirements. Finally, Intermedia urges the

---

29 ALTS Comments at 25.

30 *Id.*

31 *See*, CompTel at 17-18. Intermedia notes that GTE suggest that contracts between an affiliate and the ILEC should be available only upon request. GTE at 19. The Commission clearly should reject this view as it would incent ILECs act secretly, and CLECs would have no way on knowing when or for what purpose an ILEC entered into a contract with its affiliate.

32 ALTS Comments at 21; AT&T Comments at 20; CompTel Comments at 22-24; e.spire Comments at 11-12; ICG at 8-15.

33 Allegiance Comments at 24.

Commission to state affirmatively that ILECs may not move SS7 signaling functions out of the public switched network to any unregulated affiliate.[34]

B. Predictably, the ILECs argue for rules that would eliminate any effective restrictions on the affiliate

The record demonstrates that nothing short of complete structural separation will limit potential ILEC discriminatory and anticompetitive activity and maximize the chances for the Commission, competitors and consumers to detect it. The ILECs, however, characterize the Commission's proposed structural separation safeguards for ILEC advanced services affiliates as unnecessary and too restrictive,[35] and instead, the ILECs argue in favor of various flavors of accounting safeguards in place of structural separation.[36]

The reason that the ILECs support accounting safeguards is clear, however: ILECs wish to leverage their rate-payer financed, bottleneck local loop facilities and market power to limit the ability of CLECs to provide advanced services under the auspices of section 706. As evidence of this intent, Intermedia notes that Ameritech believes that it should be permitted to engage in joint marketing with its affiliate, and that it should be permitted to operate and maintain its affiliate's equipment.[37] Bell Atlantic contends that there is no reason to restrict an affiliate's access to its parent's capital.[38] BellSouth argues that customer accounts, employees, and brand names should be shared between the ILEC and any advanced services

---

34 Joint Comments of the Indiana Utility Regulatory Commission and the Public Service Commission of Wisconsin at 11.

35 GTE at 9-10.

36 Bell Atlantic Comments at 23; U S WEST Comments at 25-26.

37 Ameritech Comments at 54-56; SBC Comments at 6-12.

38 Bell Atlantic Comments at 31.

affiliate.[39] SBC submits that joint ownership of facilities should be permissible.[40] Incredibly, U S WEST has the audacity to state that having to pay for local loops would prevent ILECs from serving mass markets, "just as it has deterred the CLECs."[41] Intermedia believes that these ILEC statements alone should convince the Commission that it should further strengthen its proposed structural separation rules.

Not surprisingly, the ILECs fail to explain why such an accounting-safeguard "affiliate" would escape the unbundling obligations of section 251(c)(3) or the "successor or assign" language of section 251(h). Moreover, the proposals of the ILECs run directly contrary to the Commission's stated goal of establishing a *truly* separate ILEC advanced services affiliate that stands in the same shoes as unaffiliated CLECs. For these reasons, the Commission should flatly reject the ILECs' accounting safeguards proposals, and instead, the Commission should strengthen its proposed separate affiliate rules consistent with the above-mentioned proposals.

C. State commissions support the view that accounting safeguards are inadequate to guard against ILEC discrimination and predatory practices

Adding weight to the CLEC view that non-structural safeguards would inadequately guard against ILEC discrimination and predatory practices, state commissions filing comments in this proceeding support rigid structural separation as opposed to accounting safeguards. For example, the Indiana Utility Regulatory Commission confirmed Intermedia's concern regarding transactions between any ILEC data affiliate and the parent company. As the

39 BellSouth Comments at 44.

40 SBC at 6-12.

41 U S WEST Comments at 27 n.33.

Indiana commission noted, transactions between Ameritech and its frame relay affiliate ("AADS") have slowed the ability of competitive carries to rollout frame relay services in the Ameritech region.[42]

The Minnesota Commission described U S WEST's preferential treatment of its own Internet service provider ("ISP") affiliate, and noted that that ILECs and their affiliates will conspire to give each other favorable treatment.[43] Indeed, the Minnesota Commission noted that concerns about U S WEST's discriminatory practices prompted the Minnesota State Attorney General to file a formal complaint against U S WEST.[44] Similar discrimination allegations were made against U S WEST in the Commission's companion *706 Notice of Inquiry* proceeding in which the Coalition of Utah Independent Service Providers chronicled in detail U S WEST's anticompetitive actions in favor of its ISP affiliate.[45]

The Public Utility Commission of Texas similarly expressed concerns that any advanced services affiliate might act in concert with the ILEC to favor the affiliated ISP to the disadvantage of other ISPs.[46] As the Texas Commission noted, the potential for the advanced services affiliate to become a dominant player in the market necessitates stringent guidelines for all transactions and communications going to and from the ILEC and the advanced services affiliate.[47]

---

42 Indiana Utility Commission Comments at 6.

43 Minnesota Department of Public Service Comments at 7.

44 *Id.* at 7.

45 Coalition of Utah Independent Service Providers Comments at 6 in CC Docket No. 98-146.

46 Public Utilities Commission of Texas Comments at 2.

47 Texas Public Utilities Commission Comments at 2.

Thus, as demonstrated, state commissions clearly support stringent structural safeguards over the ILEC-proposed accounting-safeguard affiliate. Intermedia suggests that this Commission heed the advice of its state counterparts and strengthen the structural protections proposed in the *NPRM* to accord with the suggestions presented above.

III. THE COMMISSION SHOULD ESTABLISH UNIFORM LOCAL LOOP REQUIREMENTS

In connection with the Commission's establishment of national standards for local loops, the Commission should standardize the loop offerings available to CLECs for the provision of advanced services. Despite barely credible claims to the contrary, the extensive record in this proceeding unequivocally demonstrates the overwhelming support for the establishment of national standards for loop offerings, and makes clear the pressing need to establish uniform national standards for loop offerings to foster the deployment of advanced services.[48]

As Intermedia indicated in its initial comments in this proceeding, the Commission should clarify that, at a minimum, all ILECs must make available four basic forms of standard loops in order to promote the deployment of advanced services. The Commission should require that all ILECs provide the following types of loops: two-wire analog; two-wire digital; four-wire analog; and four-wire digital.[49]

---

48 SBC argues that "national design rules and standards would have a significant and negative effect on the efficiency of the procedures used to provision loops…" SBC at 30.

49 Intermedia Comments at 53.

Notably, comments filed by several state commissions strongly support nationwide loop standardization that would require a set menu of loop offerings that can be supplemented by state regulators to reflect the particular needs of each state.[50] In addition, a number of CLECs echo Intermedia's frustration and outline their difficulties in establishing and implementing a national business plan in light of the hodgepodge of loop requirements that have been defined among the various states. As ICG indicated, CLEC business plans are being hamstrung by ILEC restrictions on the types of digital loops they provide; CLECs should not be restricted to the one or two digital loops that ILECs elect to utilize themselves.[51] It is strikingly apparent that if the Commission is serious about promoting the deployment of advanced services, it must establish national standards to ensure that, for instance, DSL capable loops and dark fiber -- elements expressly required by some PUCs, and not addressed by others -- are uniformly available to all CLECs across the country.[52]

A. The Commission has authority to establish uniform local loop requirements

Numerous commentors have urged the Commission to define additional UNEs and require that they be offered on a national basis, noting the FCC's clear and unequivocal authority to do so.[53] Intermedia observed in its initial comments in this proceeding that under the

---

50 Illinois Commerce Commission Comments at 13; Minnesota Dept. of Public Service Comments at 17.

51 IGC Telecom Group, Inc. Comments at 27-28.

52 e.spire Communications Comments at 39; IGC Comments at 27-28; MCI Comments at 78-83; 86-87; Information Technology Association of America Comments at 17; Sprint Comments at 19; TransWire Communications Comments at 7-11.

53 CompTel Comments at 45-48; Covad Comments at 39, 40; e.spire Communications, Inc. Comments at 34; Intermedia Comments at 49; PageNet Comments at 15.

express terms of the Act, the Commission has broad authority to define UNEs.[54] This authority was reaffirmed once again when the Eighth Circuit Court of Appeals recently stated that "pursuant to section 251(d)(2) [of the Act], it is within the authority of the FCC to determine which of these network elements – *the facilities, the functions, or both* – incumbent LECs must make available on an unbundled basis."[55] In the *Shared Transport Decision*, the court stated that the statutory definition of "network element" expressly "includes both individual network facilities and the functions which those facilities provide, either *individually or in consort*," and that, as presented, the shared transport UNE did not eliminate the distinction between unbundled access and resale. In light of this decision, the path that the Commission should take is apparent: the Commission should exercise its authority to set forth standardized loop requirements.

The implementation of a national framework for local competition, achieved in part by relieving CLECs from their on-going battles with ILECs over the provisioning of DSL capable loops, will no doubt spur the deployment of advanced services. At the same time, the joint state/federal authority mandated by the Act will be preserved, in that states will obviously maintain their jurisdiction under Sections 251(c) and 252(d) to set rates for local loops, or any other national standardized element, including the "Bitstream" loop proposal made by ALTS in its initial Comments,[56] which has generated substantial support in the record of this proceeding,

---

54 Intermedia Comments at 46.

55 *Southwestern Bell Telephone et. al v. FCC et al.*, 153 F.3d 597 (8th Cir. 1998) (emphasis added) ("*Shared Transport Decision*"). In the *Shared Transport Decision*, several ILECs challenged the FCC's shared transport UNE on grounds that: (1) the FCC has "no power to aggregate" ILEC transmission facilities into "a single network element"; and (2) the FCC's shared transport UNE was so broadly defined that it obliterated any meaningful distinction between unbundled access to UNEs (section 251(c)(3)) and total service resale (section 251(c)(4)). The Eighth Circuit rejected both of these arguments.

56 ALTS Comments at 57-58; HAI White Paper at 75-80.

as discussed below.

B. The record supports Intermedia's request that the Commission define the Extended Link as a distinct UNE

As Intermedia explained above, as well as in its initial comments, the authority of the Commission to functionally define elements can no longer be seriously called into question, in light of the *Shared Transport Decision*. Further, the record in this proceeding evidences strong support for the Commission to exercise its authority to adopt an Extended Link UNE. Creation of an Extended Link UNE would facilitate the accelerated deployment of advanced service offerings, while at the same time conserving CLEC resources, and precious collocation space in the central office.[57] Establishing the Extended Link as a UNE would obviate the need to require CLECs to collocate in every end office and install facilities that mirror the ILECs' existing distributed network configuration. Instead, CLECs could reach customers through a single transmission facility made up of a loop, multiplexing, and transport that extends from the CLEC's point of interface to the customer premises. Another variation of Extended Link would include transport to and from a central office and central office multiplexing.

The initial comments in this docket extol the benefits of the Extended Link.[58] From these comments, it is apparent that the Extended Link is an important mechanism that will expand and accelerate the roll-out of advanced services. The record indicates that in at least two states the Extended Link is available, but not as a UNE.[59] In New York, Bell Atlantic, in conjunction with its 271 application, has committed to provide the Extended Link arrangement

---

57 e.spire Communications Comments at 41-42; Intermedia Comments at 47-49.

58 *See e.g.*, e.spire Communications Comments at 22, 35.

on a voluntary basis.[60] However, Bell Atlantic-New York has, without legal or technical basis, sought to restrict the use of its Extended Link arrangement to circuit-switched voice services. In Texas, several CLECs are enjoying the benefits of Extended Link arrangements pursuant to interconnection agreements that were executed prior to the decision of the Eighth Circuit in *Iowa Util. Bd.* However, following that decision, most ILECs have taken the position that CLECs must physically collocate at every point in the ILEC network where two UNEs must be connected, resulting in staggering costs being foisted upon CLECs. However, those pre-*Iowa Util. Bd.* interconnection agreements are set to expire this year, whereupon, those CLECs too, will face the daunting prospect of being forced to unnecessarily collocate at every ILEC end office and tandem in a given service area. As Intermedia asserted in its initial comments, such a requirement effectively prevents CLECs from accessing UNEs, and frustrates the goals of the Act.

As regulators in New York and Texas have already been made aware, Extended Links maximize the utilization of collocation space. As competition develops, the demand for collocation space will, no doubt, increase. As the Commission is well aware, reconditioning space for collocation is a very time consuming and expensive proposition, as is the construction of new collocation space. Requiring collocation for combining two lengths of a single transmission facility from a CLEC's point of interface to the customer premises would consume large amounts of collocation space with no corresponding benefits anyone, most of all, local ratepayers.

(…continued)

[59] e.spire Communications Comments at 41-42; Intermedia Comments at 47-49.

[60] Comments of Intermedia at 23-24.

In light of the tremendous benefits the Extended Link provides in easing collocation burdens and thereby reducing the cost of entry into local markets, Intermedia urges the Commission to adopt the Extended Link as a UNE. The officious restrictions upon, and voluntary nature of, Bell Atlantic-New York's Extended Link offering crystallizes the need for the Commission to act now to mandate that Extended Links be made available as part of the Commission's national minimum loop offerings. It is the only way to provide the regulatory certainty and reliability that CLECs must have before investing additional hundreds of millions of dollars in advanced service networks.

C. Intermedia supports the ALTS "Bitstream" approach as an additional alternative to unbundled copper or fiber loops

In its initial comments in this proceeding, ALTS proposed the adoption of a "Bitstream" unbundled network element as a national standard, to supplement the existing UNEs that have already been established by the Commission and state regulators.[61] Intermedia urges the Commission to adopt the ALTS "Bitstream" proposal *in addition to, not in lieu of, 2-wire and 4-wire copper loops*.[62] The ALTS proposal is technology-neutral, as required by the Act,[63] and it supports a variety of entry strategies for facilities-based competition. Intermedia agrees with ALTS that the Bitstream UNE will provide a valuable tool to support the introduction of

---

61 ALTS Comments at 57-58; HAI White Paper at 75-80 and *passim*.

62 Under the ALTS proposal, a "Bitstream" UNE would provides a broadband channel between the end user customer premise and a CLEC's point of presence, thereby offering CLECs broadband functionality that enables them to provide services to end users, regardless of the loop or central office technology used by the ILEC.

63 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 87-147, FCC 98-188 (rel. Aug. 7, 1998) at ¶11.

advanced telecommunications services in local markets, and that the Commission should exercise its clear authority to establish it. As Intermedia explained above, the Commission's authority to define additional UNEs cannot credibly be questioned.

D. The Commission should define other UNEs as requested by CLECs

The record of this proceeding is replete with evidence of the need for the Commission to define and make available additional UNEs.[64] The world has changed in immeasurable ways since the Commission released its *Local Competition Order* just over two years ago.[65] Accordingly, the Commission must revisit its UNE definitions and supplement them, as described below, in order to address what in some cases, is a disconnect between the Commission's regulations and the realities of the competitive marketplace. Specifically, Intermedia urges the Commission to exercise its undisputed authority to: (1) define dark fiber as a UNE; (2) require that conditioned and electronically equipped 2- and 4-wire digital loops be made available to CLECs; (3) mandate subloop unbundling; and (4) adopt rules requiring that ILECs make available to CLECs interoffice transport at SONET speeds.

---

64 CompTel Comments at 45-46; Covad Comments at 35-36; e.spire Comments at 34, 41; KMC Comments at 23-24; MCI WorldCom Comments 86-87; NorthPoint Comments at 28-29.

65 *Implementation of the Local Competition Provisions in the Telecommunications Act*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (rel. Aug. 8, 1996) ("*Local Competition Order*").

1. The Commission Should Define Dark Fiber as a UNE

In its *Local Competition Order*, the FCC initially demurred on the question of whether to define dark fiber as a UNE, citing an insufficient record.[66] However, over the past two years, a record has been complied, and the passage of time has magnified and confirmed the need to establish dark fiber as a UNE. Intermedia supports the positions taken by several CLECs and urges the Commission to define dark fiber as a UNE.[67] In the same way that uncertainty regarding loop availability is frustrating the deployment of advanced services, so too, is the uncertainty regarding access to dark fiber.

As Allegiance Telecom, Inc. indicated in its comments in the Advanced Data Services *NOI* proceeding,[68] it is imperative that CLECs have reliable access to dark fiber.[69] In this proceeding, Qwest stated that only with dark fiber will competitive carriers be able to install their own loop electronics, and thereby credibly compete with the ILECs in the provision of exchange and exchange access services.[70] Under the present regulatory scheme, however, some states have defined dark fiber as a UNE, while other states have either not addressed the issue, or have declined to find that dark fiber is a UNE.[71] As broadband applications, demanding ever increasing bandwidth capacity, begin to proliferate, it will become increasingly important that CLECs have access to high capacity interoffice and loop transport facilities. Therefore, the

---

66 *Local Competition Order*, 11 FCC Rcd 15499, 15722 (rel. Aug. 8, 1996).

67 RCN Comments at 17; Qwest Comments at 66.

68 CC Docket No. 98-146.

69 Allegiance *NOI* Comments at 4-6.

70 Qwest Comments at 66.

Commission should define dark fiber as a UNE, thereby providing CLECs with regulatory certainty to ensure robust deployment of competitive advanced services.

2. Access to 2- and 4-Wire Conditioned Loops Should be Required

Intermedia concurs with e.spire and other competitors who urge the Commission to clarify the types and classes of loops that must be unbundled pursuant to the Commission's existing loop definition.[72] It has been Intermedia's experience that while a number of ILECs evidently offer "ADSL-" and "HDSL-loops," the fact of the matter is that these loops are neither equipped with the electronics to provide such services nor are they "conditioned" in a way that enables competitors to provide them.[73] As Intermedia stated in its initial comments, BellSouth's Georgia SGATC is illustrative of the problem.[74] The BellSouth Georgia SGATC purports to offer nine different varieties of unbundled loops, for which the prices vary greatly due, in part, to the way that BellSouth defines the loops. e.spire highlighted similar experiences with inflated loop prices justified on dubious definitional grounds.[75] Intermedia cannot overstate the importance to CLECs of the availability of four basic types of loops: 2-wire analog, 2-wire digital, 4-wire analog, and 4-wire digital. Moreover, Intermedia agrees with competitors that 2-

(…continued)

71 *Id*.

72 The Commission has defined a "local loop" as: "a transmission facility between a distribution frame, (or its equivalent) in an incumbent LEC central office, and an end user customer premises." 47 C.F.R. § 51.319(a). *See e.g.*, e.spire Comments at 39-41; Intermedia Comments at 53-56; AT&T Comments at 41.

73 e.spire Comments at 39-41; Intermedia Comments at 53-56.

74 Intermedia Comments at 54.

75 e.spire Comments at 39.

and 4-wire digital loops must be made available in basic, conditioned, and electronically equipped varieties.[76]

3. ILECs Are Legally Obligated to Offer Unbundled Access to Fiber to the Curb and Home

Intermedia agrees wholeheartedly with those commentors who urge the Commission to clarify that the fiber ILECs are currently deploying in their own loop plant must be unbundled pursuant to the Commission's existing loop definition.[77] There is no question that the fiber that ILECs are deploying directly to large customer locations, business parks, or government or educational campuses must be unbundled pursuant to the Commission's functional and technology neutral definition. Because such fiber deployment generally takes the form of "fiber to the home" (a full fiber loop) or "fiber to the curb" (a partial fiber loop), the Commission should make clear that ILECs must offer both varieties on an unbundled basis.

4. ILECs Must Provide CLECs with Interoffice Transport at SONET Speeds

As a number of CLECs point out, many ILECs take the position that they are not obligated to provide interoffice transport at speeds above DS1 or DS3.[78] Intermedia concurs with these commentors, and requests that the Commission clarify that, under its existing definition of interoffice transport, ILECs cannot refuse to offer unbundled access to optical interoffice transport. There can be no disputing the fact that under Commission's functional and

---

76 AT&T Comments at 41.

77 *See* 47 C.F.R. § 51.319(a) (definition of local loop). *See e.g.* AT&T Comments at 43; MGC Comments at 37-45; PSINet Comments at 8.

78 *E.g.,* Covad Comments at 57; Qwest Comments at 64-65.

technology neutral definition of interoffice transport, the unbundling requirement is not subject to capacity-based limitations or exclusions.[79] Indeed, unbundled access to high capacity transport at optical speeds of OC-3 to OC-48 and above is necessary to support competitive broadband service deployment on a mass scale. The Commission should act promptly to remove any doubt about the right of CLEC to have unfettered access to unbundled interoffice transport.

IV. THE COMMISSION SHOULD CLARIFY THAT ILECS MUST PROVIDE CLECS WITH PARITY OF ACCESS TO OSS AND OTHER SOURCES OF INFORMATION REGARDING ADVANCED SERVICE-CAPABLE LOOPS

Intermedia is in full agreement with those commentors who emphasize the need to obtain information necessary to determine which loops are capable of providing DSL-based services.[80] Some ILECs, however, argue that such information is not readily available, or that they need not provide it even if it were, and that it is necessary to dispatch technicians to physically examine individual loops to determine whether they are DSL-capable.[81] For instance, SBC contends that "loop information is often not available in any electronic system, and a manual look- up must be performed using the cable maps in engineering … anywhere from 7% to 20% of the time for Pacific, and greater than that for SWBT. SBC has no idea how to reproduce [loop] records and make them available, much less how to keep them updated so that

---

79 The Commission at 47 C.F.R. §51.319(d)(2) sets forth ILEC's interoffice transport obligations, stating in relevant part that the ILEC must: "Provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services."

80 *E.g.*, ICG Comments at 29-32; e.spire Comments at 35-36.

81 *E.g*; SBC Comments at 30; U S West Comments at 46.

CLECs can have the ability that the FCC envisions."[82]

Intermedia submits that such claims are extremely dubious, and barely pass the "red-face" test, in light of Bell Atlantic's comments on the subject in this proceeding. Bell Atlantic recently announced that it would make available as of October 17, 1998, via EDI and Web GUI interfaces, information to CLECs regarding DSL loop availability.[83] Indeed, Bell Atlantic's web site offers loop qualification information to potential subscribers to its ADSL service immediately, and without charge.[84] Intermedia believes that SBC's claim that it has "no idea" how to make loop information electronically available is spurious, in light of the fact that Bell Atlantic will be turning up their electronic interface tomorrow.

Intermedia agrees with e.spire that the Commission's current OSS rules require ILECs to make available, in electronic form, whatever information they currently have.[85] Moreover, Intermedia believes that, in order to facilitate the deployment of competitive advanced services offerings, the Commission should find that access to loop specifications -- including loop length, cable gauge, and the presence of bridged taps, loading coils or other impediments -- is an essential OSS feature, and that ILECs are obligated to provide access to a database that contains such information.[86] Accordingly, the Commission should reject SBC's proposal to allow ILECs to give CLECs information about loop availability only in response to CLECs

---

82 SBC Comments at 31.

83 Bell Atlantic Comments at 45; *see also* Industry Change Control Meeting, October 7, 1998, "Change Control Items for October 17, 1998 Release," at 1.

84 <http://www.bell-atl.com/adsl/index.html>.

85 e.spire Comments at 35-36.

86 *See* ICG Comments at 29, 32.

providing detailed information regarding the electronics it intends to use on the loop.[87]

We concur with e.spire's proposal that the Commission prohibit ILECs from imposing exorbitant charges on CLECs for identifying DSL-capable loops.[88] If an ILEC has the information compiled and available at the time it is requested by the CLEC, the Commission should make clear that the ILEC can charge competitors no more than nominal fee to recover the cost of making it available electronically. If an ILEC has the ability to obtain the requested information electronically and without the engineers or technicians needing to physically examine loops, the Commission should prohibit the ILEC from imposing dispatch charges on its competitors. The Commission also should establish that the charge for loop conditioning information should be cost-based and nonrecurring. Intermedia and e.spire agree that if an ILEC does not charge its advanced services end users a similar nonrecurring charge, it should not be permitted to impose one on CLECs.[89]

87 *See* SBC Comments at 32.

88 e.spire Comments at 35-36.

89 Intermedia Comments at 50; e.spire Comments at 36. In ADSL tariffs recently filed with the Commission by BellSouth, Pacific Bell, U S West and Bell Atlantic, no ILEC tariffed a nonrecurring charge for inspections to determine whether existing loops were DSL-capable.

CONCLUSION

Intermedia strongly recommends that the Commission adopt the rules and policies set forth herein, which will foster robust competition in local telecommunications market and speed the deployment of advanced services.

Respectfully submitted,

_____

Jonathan E. Canis
Ross Buntrock
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, NW
Fifth Floor
Washington, DC 20036
Tele: (202) 955-9664
Fax: (202) 955-9792

Counsel for
INTERMEDIA COMMUNICATIONS INC.

October 16, 1998